

EXECUTIVE OFFICER'S SUMMARY REPORT
9:00 a.m., March 24, 2004
Regional Water Quality Control Board
5550 Skylane Blvd
Santa Rosa, California

ITEM: 10

SUBJECT: Status Report on Work Efforts in Five Humboldt County Watersheds: Elk River, Freshwater Creek, Jordan Creek, Bear Creek, and Stitz Creek

We last updated the Board on this issue on December 3, 2003. That meeting was a culmination of a long process, most notably the Independent Science Review Panel efforts. The Board, by adopting a series of motions, gave guidance to staff for future actions in the five watersheds. The motions are included as Attachment 1. Staff adapted this list of motions into a Gantt chart (Attachment 2), which plots out a timeline for the actions that staff will take to accomplish the motions. The list of motions and the Gantt chart provides the foundation of this status report.

Motion 2

The Board directs that staff shall require submit of reports of waste discharge, leading to WDRs on a watershed-unit or segment basis, with larger mitigation ratios as appropriate, in Elk and Freshwater. Sufficient notice shall be given to allow adequate time for preparation of environmental documentation.

Staff is preparing requests for Reports of Waste Discharge to be sent to Pacific Lumber (Palco) and other applicable landowners. The legal and regulatory issues involved are very complex. Based on a number of factors (level of documentation, evidence of impacts, and the like), staff has determined that the best candidates for watershed-wide Waste Discharge Requirements (WWDRs) are upper Freshwater Creek, North Fork Elk River, and South Fork Elk River watersheds. A complicating factor in South Fork Elk River is that, in addition to Palco, Simpson Timber and the US Bureau of Land Management own significant acreage. Taking a cooperative approach, staff has initiated discussions with Simpson, BLM, and Palco to give them adequate lead-time and notification before requests for Report of Waste Discharge are sent.

Watershed-wide WDRs must be written to withstand technical and legal challenges, both on their own and for CEQA compliance. Staff is being meticulous about developing WWDRs for timber harvesting and related activities in these watersheds because they will be the first of their kind in California, and the use of WDRs as a tool in this fashion introduces some new (and complex) technical and legal obstacles. Staff's aim is to prepare a complete and technically sound WWDRs for the Board's consideration, and to ensure that the WWDRs will withstand challenges. Staff is planning to present the WWDRs for the Board's adoption at the December 1, 2004 meeting.

Motion 3

The Board finds that water quality benefits can be derived from short-term remediation actions. The Board therefore directs the Executive Officer to prepare a proposal for pursuing short-term in-stream remediation options, exclusive of dredging. The proposal will consider, among other appropriate measures, the removing of channel obstructions, placement of woody debris, and construction of sediment detention basins.

On February 11, 2004, staff provided the Board with an update on evaluation of channel modification options that could alleviate flooding in Freshwater Creek and Elk River, in response to this motion. Options discussed included dredging of instream sediment deposits, vegetation removal, construction of sediment catchment basins, and adjustment of roadways which flood and inhibit access and egress of numerous residents.

As a means of evaluating the factors affecting flooding, staff have begun an initial hydraulic analysis utilizing a widely used Army Corps of Engineers model, HEC-RAS. The intent of the HEC-RAS analysis is to identify solutions to the flooding problems through identification of:

- specific areas that act as choke points,
- the primary controls (cross-sectional area, roughness, etc.), and
- additional hydraulic informational needs.

Beginning in December 2003, Regional Water Board staff has been organizing meetings with the numerous permitting agencies to identify channel modification issues. The next such meeting with a broad interest group will be scheduled for early April. Staff anticipates the meeting participants will include the permitting/interested agencies, Pacific Lumber Company, watershed landowners and their attorney, and watershed scientists to discuss:

- the possibility of construction of sediment catchment basins,
- identification of a local sponsor to partner with the Army Corps to pursue a dredging feasibility study, and
- funding options.

Also, in October 2003, the Regional Water Board received a petition signed by sixty-four residents of the Elk River watershed requesting the Regional Water Board order Pacific Lumber Company to dredge the low gradient reaches of Elk River below Pacific Lumber Company's ownership as a means of reducing flooding in the watershed. In April 2002, Palco representatives offered to participate in a dredging project to help alleviate the nuisance flooding conditions in Freshwater Creek and Elk River. Recent inquiries with Palco indicate a continued willingness to participate. However, they would prefer to participate as part of a community effort and not be ordered to conduct a dredging project. Palco is currently being sued over the flooding issue and would want relief from the lawsuits should they conduct a voluntary dredging effort. The Board will formally hear the petitions at the May 12, 2004 meeting.

Motion 4 (Two Parts)

The Regional Water Board concludes that:

- Cleanup and Abatement Order R1-2002-0114 be revised to clarify the inclusion of South Fork Elk River in the Order.
- The Board directs the Executive Officer jointly develop a time schedule with Pacific Lumber Company to address cleanup of sediment sites in the Bear, Stitz and Jordan Creek watersheds. The Executive Officer is further directed to issue a Clean up and Abatement or 13267(b) if the first dates in the cooperative schedule are not met. The Board further directs the Executive Officer to develop a Time Schedule Order if the dates in the order are not met.

Because staff was close to finalizing the Cleanup and Abatement R1-2002-0114 for Elk River, we determined that it would be more efficient to come to agreement on that CAO, as it applies to the North Fork Elk River, and issue an additional CAO to encompass the South Fork Elk River. Issuing a separate CAO for the South Fork Elk River allows us to incorporate our experience in administering CAO R1-2002-0114 and result in a more effective Order. The Order will have been issued by the date of the Board meeting.

On February 5, 2004 the Executive Officer sent a letter to Palco finalizing the workplan for the North Fork Elk River (Attachment 3.) This letter expressed concern over Palco's apparent slow pace of work on the sediment source cleanup, and required a revised schedule of repairs by February 23, 2004. As of the date of this report, Palco has not complied with the terms. Staff is evaluating a response, which will have taken place by the date of the Board meeting.

As for the second part of Motion 4, the Executive Officer sent a letter to Palco (Attachment 4) on March 4, 2004, in which she notified Palco that we need to jointly develop a time schedule for cleanup of sediment sites in Bear, Stitz and Jordan Creeks. The letter requires Palco to submit a schedule by April 12, 2004, and notifies them that, if we cannot agree on a time schedule soon, we will issue a Cleanup and Abatement Order for the sediment reduction activities. A time schedule order could follow if the dates in the potential CAO are not met.

Motion 5

The Board directs that, until watershed segment WDRs are in place, staff shall develop and require the implementation of mitigation measures as necessary to address cumulative impacts from individual timber harvest plans. In part, staff is instructed to pursue modification of Zero Net Discharge (ZND) to raise the mitigation ratio as appropriate, in the range of 300% to 700% to mitigate for problems identified in the Independent Science Panel Report.

As part of this motion, staff, working with Palco science personnel, have proposed a method of calculating both sediment production (landslides, bank erosion, road surface erosion, and the like) and sediment reduction. Although we have not yet agreed with Palco on the details of the accounting (primarily the values to be assigned to various processes), we have agreed on the

value of this approach. We have seen positive mitigation agreed to by Palco on timber harvest plans (THPs) using this approach. Because it will be some time before we have watershed-wide WDRs or TMDLs in place in all of these watersheds, this approach will probably be in use for many plans.

Pre-motion Regulatory Activities

Regulating Timber Operations through Waste Discharge Requirements, and Timber Harvest Plan Review

On November 5, 2003, the Regional Water Board adopted two Orders: Waste Discharge Requirements Order Nos. R1-2003-0118 and R1-2003-0119 (WDRs), for THPs in Elk River and Freshwater Creek, respectively. The WDRs cover THPs that include winter period timber harvest activities in the two watersheds, encompassing twenty two THPs (including nine THPs carried over from the previous WDRs) in the Elk River watershed and sixteen THPs (including four THPs carried over from the previous WDRs) in the Freshwater Creek watershed.

Palco has submitted two THPs in Elk River and Freshwater Creek since adoption of Waste Discharge Requirements Order Nos. R1-2003-0118 and R1-2003-0119 in November 2003. Palco requested an amendment to the WDRs to encompass additional plans. However, the WDRs as adopted already encompass more than the 500 equivalent clearcut acres in Freshwater Creek, and the 600 equivalent acres in Elk River, as allowed by the Department of Forestry and Fire Protection for this year. There have been no THPs submitted in Bear, Stitz, or Jordan Creeks.

One of staff's priorities has been the inspection of plans encompassed by the WDRs. That time has also been spent investigating Palco's sediment source inventory repair work. This serves to help our staff evaluate the classification protocol, and the effectiveness of the ensuing remediation (if any) on sites on or near WDR plans. Staff has generated interim progress reports on their findings in Freshwater Creek and Elk River watersheds (Attachment 5.) Inspections in Elk River have so far outpaced inspections in Freshwater Creek.

Since December 3, 2003, staff has conducted field inspections (12 days to date) in Elk River watershed to evaluate the status of the sediment savings sites inventoried by Pacific Watershed Associate (PWA) that are in close proximity to Timber Harvest Plans (THPs) which are operating under current Waste Discharge Requirements (WDRs).

The main issue that staff has observed regarding operations on WDR plans is the lack of sufficient mitigation for sediment sites. Staff has also noticed a substantial amount of localized road degradation (from yarders and trucks at log decks) this winter on the main haul roads. However, they do not appear to have been transporting significant amounts of soil into nearby watercourses.

Palco has repaired many more PWA sites than have been disclosed to WQ. In addition, most of the Elk River PWA sites appear to pose less of a risk to WQ than was originally documented by PWA. However, there still remains a considerable number of High and Moderate sites yet to be repaired within the Elk River watershed. There also is concern that a considerable percentage of the sites repaired by Palco may be done incorrectly and elevate the risk to WQ. It should also be noted that staff has only been able to inspect 19% of the Elk River PWA sites to date.

Status of Cleanup and Abatement Order No. No. 98-100

To address impacts to drinking water supplies, the Executive Officer issued Cleanup and Abatement Order (CAO) No. 97-115, later superseded by CAO 98-100, to Pacific Lumber Company. Pacific Lumber Company petitioned these Orders to the State Board, and a stipulated agreement between the Regional Board and Pacific Lumber Company was reached in January of 1999, wherein Pacific Lumber Company agreed to comply with CAO 98-100, while not admitting fault.

CAO 98-100 requires Pacific Lumber Company to cleanup and abate the impacts of its discharge and to develop alternative permanent domestic and agricultural water supplies for affected residents to replace their damaged water supplies, which historically utilized the Elk River.

Some issues remain with individual systems, and staff continues to work with Palco and their consultant (SHN Engineers) to solve any problems. SHN has been encouraging the residents to pay attention to their systems when they are working well, not just when there is a problem.

The issue of long-term maintenance remains a significant issue for Palco, as it is for the residents. SHN is working on the long-term maintenance costs of these new systems. We have asked them to include in their analysis the costs for 5, 10, 20 and 50 years of future maintenance as it has been staff's interpretation that PL is responsible for these systems until the river returns to pre-1993 conditions, however long that will take.

Our staff is working on this long-term maintenance issue as well. We intend to choose the three best-constructed and maintained systems as examples to arrive at the highest range of costs for the original systems, and the closest to what probably would have been required for a well-functioning domestic water supply. It is very likely that Palco will appeal this issue to the Board, based on staff conversations with their attorneys.

Sensitive Watershed Nomination

The formation of the Elk River Sensitive Watershed nomination review committee, as described in section 916.8 of the Forest Practice Rules, is currently under consideration by a committee of the Board of Forestry and Fire Protection (BOF). The sensitive watershed package, submitted to the BOF in August 2003, requires that the nomination review committee provide a recommendation for approval or denial of the nomination package to the full Board within 120 days of receipt of the nomination.

The review committee is currently discussing the formation, structure and time schedule for the nomination review committee. The BOF's current plan is to form a committee of approximately 12 watershed scientists and landowners, with a technical advisory committee composed of agency staff as backup to the full committee. The BOF is currently soliciting the interest and availability of various watershed scientists in the review of the nomination package. The current schedule is for an initial committee meeting on April 23, a field trip on May 14, and a report with recommendation to full board at the BOF meeting in June.

Licensing Issues

The California Geological Survey (CGS) has repeatedly raised questions about the geological aspects of our timber program. Their actions are on two fronts. There have been alleged complaints about staff practicing geology without a State license, and they have requested the State Mining and Geology Board to review the propriety of utilizing the RSL methodology (erroneously called the Reid methodology) of estimating sediment inputs from landslides.

- Individual Actions

CGS staff has repeatedly filed complaints to the State licensing board claiming that individual Regional Water Board staff members are practicing geology without a license. In many cases this is where our staff have evaluated impacts to beneficial uses from landslides, which should include estimating slide volumes or rates of delivery, discussing possible causal mechanisms, and the like. In response to this issue, staff has begun the process of devising a "Policy and Procedures for the Professional Practice of Geology and Civil Engineering." This will include procedures for internal document review, in-house training, and monitoring and reporting to verify that the procedures continue to meet the licensing requirements of the Business and Professions Code. Staff has been directed to have qualified, State registered engineering and geological staff review reports that are considered within the practice of engineering or geology.

- RSL Methodology

On October 23, 2003, Trinda Bedrossian of CGS sent a memorandum to the Executive Officer of the State Mining and Geology Board, or SMGB (Attachment 6). In the memo, CGS requested that the SMGB's Technical Advisory Committee on Forest Geology (TAC) determine whether uncertainties in the approach restrict its usefulness, and the appropriateness of our use of the methodology. However, the list of documents CGS provided for the TAC's use was very limited.

Our staff believes that the documents necessary for a comprehensive review, including the proper context, is much more extensive. Our Assistant Executive Officer sent a letter to the SMGB (Attachment 7), offering to assist in their review, urging a thorough and transparent process, and including an attachment listing 70 references that staff believes need to be a part of their comprehensive review. Collecting, copying, and collating these

documents was a significant staff effort that took many days.

Staff attending a meeting with the SMGB on March 11 (Attachment 8.) The TAC announced they would hold staff's letter and attached list of references in abeyance until a later time, and focused on the issues raised by CGS. The TAC determined that the RSL methodology for calculating landslide rates entailed too many assumptions, and that there was insufficient data available to derive a valid analysis. They determined that the method was not sufficient to use solely to make land-use decisions, and should not be used as a primary decision-making tool. However the TAC agreed they needed more information to inform their decision, which our staff will supply them with. They also admitted that they did not know how the Regional Water Board intended to use the method, and they recognized that regulatory and temporal imperatives require the Regional Water Board to move forward. Staff said that we fully intend to use a legally and scientifically defensible method to limit land-disturbing activities and their impacts in the five watersheds.

Preparation of Records

Our office often receives requests for the preparation of administrative records. These include official Public Records Act requests, or requests for records needed for lawsuits or appeals to the State Board. In the case of Palco's petition to the State Board on the Regional Water Board's request for a Report of Waste Discharge in Freshwater Creek (Attachment 9), Palco requested a complete administrative record, which was completed and submitted by staff. Again, the effort to collect, copy, and collate these documents was a significant staff effort that took many days. Other requests are likely in the future, including an administrative record for the Humboldt Watershed Council's lawsuit against the Regional Water Board.

TMDL Update

TMDL Problem Statement

Regional Water Board staff anticipates having draft problem statements for both Freshwater Creek and Elk River TMDLs available for public review in mid to late June 2004. This component of the TMDL will be based on staff research, as well as based in part on the "Elk River and Freshwater Creek TMDL Resident Interviews: Historic Perspectives" (Fall 2003) prepared by the Natural Resource Service Division of Redwood Community Action Agency, under contract to the Regional Water Board. Copies are available upon request

TMDL Numeric Targets

As part of the development of instream numeric targets, Regional Water Board staff has begun to analyze instream data collected by staff during the summer and fall of 2003, as well as instream suspended sediment and streamflow data collected by landowners in hydrologic year 2003. This data, in conjunction with the existing body of watershed-specific data, will be used as the basis for development of explicit instream targets. Instream numeric targets are the component of the TMDL against which TMDL attainment is measured. As such, development of appropriate instream targets needs to be based on data from other watersheds with similar geology, climatic conditions, vegetation, etc. in order to provide an appropriate “end post.”

Regional Water Board staff is also investigating the applicability of hillslope targets as a means of defining attainment and measuring compliance with and effectiveness of the TMDL. Hillslope targets could include parameters such as miles of road hydrologically connected to watercourse, miles of native surfaced roads, and/or landslide prevention targets.

TMDL Source Analysis

Regional Water Board staff is in the final stages of preparing a contract with a private vendor to compile the sediment source data needed to augment Pacific Lumber Company’s sediment budget work in the two watersheds developed under the Habitat Conservation Plan’s Watershed Analyses. This contract work will focus on non-Pacific Lumber Company ownership as well as on specific erosional processes across the watersheds, regardless of ownership.

In response to the requirements of the March 26, 2003, 13267(b) Orders, staff from the Regional Water Board and Pacific Lumber Company met in Scotia with a number of Pacific Lumber Company’s consultants and analysts to further staff’s understanding of the nature, extent, limitations and strengths of the existing information regarding sediment source inventories and sediment budgets prepared for the two watersheds. As a result of this three-day meeting, some of the technical reports required under one of the Orders were provided to Regional Water Board staff at the meeting with submission dates proposed for some of the remaining reports. A follow up conversation is planned for the next few weeks to discuss the status of the remaining technical reports required under the March 26, 2003 Orders.

TMDL Implementation Plan

As described above, Regional Water Board staff met with Pacific Lumber Company staff and their consultants over the course of three days to better understanding the structure of the HCP, both in terms of the sediment budget work but also how the provisions of the HCP are being implemented and monitored. This information will help inform the development of the implementation plans for Freshwater Creek and Elk River and identify specific areas where additional protective measures are required to protect and restore all beneficial uses of water.

TMDL Monitoring Plan

The monitoring plans and agreements developed with both Pacific Lumber Company and Simpson Resource Company to inform the TMDL are completed and the data submitted to Regional Water Board staff. Staff is beginning to evaluate the data, with analysis of those data being a primary component of the instream target development.

As the TMDL develops, Regional Water Board staff will begin to develop a monitoring plan to be included in the TMDL as a means of measuring attainment of the instream targets. Protocols developed in conjunction with Regional Water Board staff, Pacific Lumber Company, and Simpson Resource Company, as part of the TMDL development monitoring, will provide a partial basis of the TMDL effectiveness monitoring protocols.

TMDL Public Participation

Public participation in the TMDL development is an ongoing process. Regional Water Board staff continues to engage in outreach and education issues relative to sedimentation in Humboldt Bay tributaries.

Water Quality Monitoring Activities

Staff has prepared a monitoring report for the Five Watersheds, which outlines the status of various water quality monitoring projects and provides an analysis of data collected to date under efforts directed by the Regional Water Board. The monitoring report appears as a supplemental document attached to this report, and is presented in a format similar to that of a previous monitoring report for the Five Watersheds, which was presented to the Board approximately one year ago at its March 27, 2003 meeting.

PRELIMINARY STAFF RECOMMENDATION:

No formal Regional Water Board action is required for this item, but the Board may provide guidance on work efforts in the five watersheds